87-262

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

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Case #_____

SUPREME COURT OF THE UNITED STATES

October Term, 1987

In the Matter of

JOHN J STANTON,
Petitioner,

A Member of the Bar
of the United States
District Court for the
District of Columbia

PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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****

QUESTIONS PRESENTED

1. Under Selling v Radford, 243 US 46, 37 SCt 377 (1917), may a federal court impose reciprocal (identical) discipline on attorneys disciplined in state proceedings where the court rules on motions challenging disciplinary charges as vague, overbroad, or inadequate for fair notice after the factfinding hearing on the charges?

2. May a federal court impose reciprocal (identical) discipline on proof of violations of disciplinary rules construed by the state court to obligate attorneys to pursue client objectives "as they see them?"

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OPINION BELOW

The yet unpublished 26 March 1987 order and memorandum of the United States Court of Appeals for the District of Columbia Circuit in Case #86-5148 is reproduced and appended to this petition.

JURISDICTION

Jurisdiction is invoked under 28 US Code 1254(1) for review of the reciporcal disciplinary order of the United States District Court for the District of Columbia in Case #AGD 84-3 affirmed summarily by order of the United States Court of Appeals for the District of Columbia Circuit in Case #86-5148.

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS INVOLVED

"No person shall be ... deprived of life, liberty, or property without due process of law," Amendment 5, United States Constitution.

"A lawyer shall not ... neglect a legal matter entrusted to him," Disciplinary Rule DR6-101(A)(3), District of Columbia Code of Professional Responsibility.

"A lawyer shall not intentionally ... fail to seek the lawful objectives of his client through reasonably available means permitted by law," Disciplinary Rule DR7-101(A)(1), District of Columbia Code of Professional Responsibility.

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS INVOLVED

(continued)

"Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (b) above, this Court, except as otherwise provided for below, shall impose the identical discipline unless the respondent attorney demonstrates, or this Court finds, that upon the face of the record on which the discipline in another jurisdiction is predicated it clearly appears:

(1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) That proof establishing the misconduct gives rise to the clear conviction that this Court could not,

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS INVOLVED

(continued)

consistent with its duty, accept as final the conclusion of the disciplining court; or

(3) That the imposition of the same discipline by this Court would result in grave injustice; or

(4) That the misconduct established is deemed by this Court to warrant substantially different discipline.

When this Court determines that any of the above elements exist, it shall enter an order it deems appropriate," Local Rule 4-3(II)(d), United States District Court for the District of Columbia.

SUPREME COURT OF THE UNITED STATES

October Term, 1987

In the Matter of

JOHN J STANTON,
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PETITION FOR WRIT OF CERTIORARI TO
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STATEMENT OF THE CASE

The United States District Court for the District of Columbia ordered petitioner, a member of its bar, to show cause under its then local Rule 4-3(II)(d) why he should not be disciplined to the same extent as by the District of Columbia (DC) Court of Appeals in In re Stanton, 470 A2d 272, 281 (DC 1983), in which that court in two proceedings had imposed discipline for several instances of

what it determined to be "neglect of a legal matter," DR6-101(A)(3), and "intentional failure to seek a client's lawful objectives," DR7-101(A)(1), id at 272, 282.

In response to the order to show cause, petitioner argued that the DC disciplinary procedure deprived him of due process by denying him an opportunity to be heard on his motion to dismiss the charges for lack of notice and that the proof of misconduct did not support the DC court's conclusion because the specific findings were mostly unsupported or speculative and, where supported factually, did not amount to disciplinary violations of which petitioner could have had fair warning. Petitioner's response demonstrated that the DC procedure forced him to defend against a petition of charges "so inadequate as not to allow him to know with what he was charged," 470 A2d at 285,

and that the DC court imposed discipline on unacceptable proof of violations of an obligation to seek or pursue client objectives "as they see them," 470 A2d at 276, a vague, overbroad construction of DR6-101(A)(3) and DR7-101(A)((1). Petitioner thus demonstrated claims or defenses of Rule 4-3(II)(d)(1) procedural due process deprivation and of Rule 4-3(II)(d)(2) unacceptable proof.

The district court committee on grievances reviewed petitioner's response and recommended imposition of reciprocal (identical) discipline because it found the opinions of the DC court to be "particularly persuasive and effective" in disposing of petitioner's Rule 4-3(II)(d) claims. Petitioner protested that the DC court had ignored his claims, but the district court imposed reciprocal discipline, stating only that "none of the defenses raised by the respondent herein

has merit sufficient to bar the imposition of reciprocal discipline and none of the defenses provided by Rule 4-3(II)(d) of this court appears on the face of the record herein."

On appeal to the DC Circuit, petitioner moved for summary reversal and remand for findings and conclusions on his Rule 4-3(II)(d) demonstrations. The court of appeals denied petitioner's motion and affirmed summarily at the same time. The court determined that summary affirmance was appropriate because petitioner's argument that the district court failed to make an independent determination that reciprocal discipline should be imposed was without merit as the DC court in its opinions had rejected the procedural due process argument petitioner raised in the district court under Rule 4-3(II)(d)(1), and the district court had concluded, on the basis of the DC court's opinions, that

reciprocal discipline was appropriate.

Petitioner requested rehearing, suggesting that the summary sffirmance effectively overruled In re Ruffalo, 390 US 544, 88 SCt 1222 (1968), by approving and adopting both the DC procedure requiring disciplinary factfinding proceedings against attorneys not fairly notified of the charges against them and the DC construction of DR6-101(A)(3) and DR7-101(A)(1) obligating attorneys to seek client objectives "as they see them." But the court of appeals refused rehearing, and petitioner now applies here for review of the district court order imposing reciprocal discipline based on the opinions of the DC court.

ARGUMENT

One incongruity with imposing reciprocal discipline based on the

opinions of the DC court is that those opinions nowhere address petitioner's Rule 4-3(II)(d) claims. In rejecting without addressing petitioner's procedural due process argument, the DC court actually rejected "the several layers of procedural due process protections," 470 A2d at 285, in favor of what it calls "fundamental aspects of procedural fairness," id, and the DC court totally ignored petitioner's arguments raised first in his motion to dismiss the disciplinary charges and afterwards in the district court under his Rule 4-3(II)(d)(2) claim of unacceptable proof of violations of disciplinary rules vaguely and overbroadly construed.

1. The DC disciplinary motions procedure constitutes a deprivation of due process.

The opinions of the DC court show that petitioner argued that the disciplinary petition of charges against him was "faulty on its face," 470 A2d at 285, and

"should have been dismissed on its face," id at 284, for reasons unmentioned in the opinions. After the factfinding hearing on the charges, the DC court determined that "no fault appears on the face of the petition," ibid. According to petitioner's argument, the "fault" was the application of disciplinary rules unconstitutionally construed in the specified charges to deprive petitioner of fair notice. The DC disciplinary motions procedure shielded the charges from effective challenge.

The procedure effectuates a policy that disciplinary cases not "be decided on motions made before the hearing," 470 A2d at 284, on the factual merits of the charges. Instead, the factfinder recommends "what disposition should be made of any motions," id at 285, so that "any possible objection to the petition can be considered together with the factual record in the case," ibid. At that

point the DC court determines whether, during the factfinding proceedings, the attorney "was not fairly notified of the charges against him because the petition was so inadequate as not to allow him to know with what he was charged," ibid.

In making this determination, the DC court considers the factfinder's recommendation to grant or to deny a motion to dismiss for want of fair notice. A recommendation to deny the motion is a recommendation to consider the factual merits of the charges. A recommendation to grant the motion, on the other hand, is a recommendation to dismiss without factual findings, which could not be reliable where there is no fair notice and opportunity for explanation and defense. But even when recommending dismissal without findings the factfinder makes and reports findings, and the DC court considers the factfinder's recommended

dismissal together with not only "the factual record in the case" but also the factfinder's recommendation "as to the ultimate disposition on the merits," 470 A2d at 285, of the charges on the factual record. The DC court never explains how its factfinder reasonably can recommend an ultimate disposition on findings while at the same time recommending a dismissal without findings.

The purpose of procedural due process is to minimize the risk of erroneous or arbitrary decisions, Addington v Texas, 441 US 418, 425, 99 SCt 1804, 1809 (1979), Mathews v Eldridge, 424 US 319, 344, 96 SCt 893, 907 (1976). In the DC disciplinary process the motions procedure increases, if it does not maximize, the risk of error by providing for inconsistent recommended dispositions.

The manifold due process faults in this procedure reflect the DC court's treatment

of fair notice and opportunity for hearing as mere "questions of pleading and form," 470 A2d at 285. But the "several layers of procedural due process protections" exist not just in criminal cases, as the DC court suggests, but in all cases involving possible deprivation of property interests by government action. Bar disciplinary cases, of course, are "adversary proceedings of a quasi-criminal nature," Ruffalo, supra at 551, 88 SCt at 1226, and before a federal court gives conclusive effect to a state court finding of unfitness to practice, it must assure itself that the attorney received the due process expected in such proceedings, In re Thies, 213 USAppDC 256, 258, 662 F2d 771, 773 (1980), citing Ruffalo.

In this case the district and circuit courts professed to find such assurance somehow in the opinions of the DC court, perhaps in the statement that it would

have no hesitation in dismissing a case in which it determined that the attorney "was not fairly notified of the charges against him." Taking that statement at face value, a federal court could infer that petitioner must have had fair notice of the charges, or the DC court would have dismissed the disciplinary case against him, but that inference is unwarranted, for at least two reasons. First, the DC disciplinary process provides for factfinding regardless of fair notice, and any dismissal for want of fair notice would come logically before, not after the factfinding stage of the process, if fair notice were truly a purpose of the process. Second, on consideration of petitioner's Rule 4-3(II)(d)(2) claim of unacceptable proof, it is clear that he could not have had fair notice or warning that his conduct for which the DC court imposed discipline violated disciplinary

rules DR6-101(A)(3) or DR7-101(A)(1).

2. The proof establishing misconduct as found by the DC court is unacceptable to a federal court under the duty to impose discipline only if constrained by principles of right and justice.

In Smith v Goguen, 415 US 566, 94 SCt 1242 (1974), the court referred to "the benefit of judicial clarification," id at 573, 94 SCt at 1247, of statutory language in setting "reasonably clear guidelines for law enforcement officials and triers of fact in order tp prevent arbitrary and discriminatory enforcement," ibid. This case depicts the danger of judicial obfuscation of the language of DR6-101(A)(3) and DR7-101(A)(1) to prosecute unconstitutional disciplinary action.

The DC court construed DR6-101(A)(3) and DR7-101(A)(1) to impose on attorneys a "duty of fidelity to the client's judgment," 470 A2d at 289, and a concomitant obligation to pursue client

objectives "as they see them," 470 A2d at 276. This new construction changed DC law, which previously resembled the federal domain, in which attorneys have "unfettered discretion, in the light of their training and experience, to decline to press the frivolous, to assign priorities between indigent litigants, and to make strategic decisions with regard to a single litigant as to how best his interests may be advanced," Minns v Paul, 542 F2d 899 (CA4 1976). Under DC law the attorney now "may not substitute his own judgment for that of the client," 470 A2d at 277, on "fundamentally important decisions on which the client's views must prevail," 470 A2d at 289.

The DC court never distinguishes "fundamentally important decisions" from "exclusively legal or technical matters which are committed to the discretion of the lawyer acting on his client's behalf,"

ibid, to make the distinction between permissible and impermissible decisions clear, definite, and informative. In effect, the DC court has construed DR6-101(A)(3) and DR7-101(A)(1) in an "external effort to direct how the obligations to the client are to be carried out," Polk County v Dodson, 454 US 312, 327, 102 SCt 445, 454 (1981).

Applying the new construction, the DC court ruled that petitioner violated the disciplinary rules in one case when he "refused to file a bond review motion on behalf of his client in the face of her direct instruction to do so," 470 A2d at 286, and leter "insisted on telling the judge that he did not approve of his client's decision to plead guilty," 470 A2d at 291; in another when he "concluded that his client had been involved in the incident," 470 A2d at 290, "so informed the client," ibid, and advised his client

"not to take the stand but that he would try to knock down the government's case," id; in a third when the "sum total," 470 A2d at 275, of "failures" "to file a bond review motion," "to communicate," and "to investigate the facts," ibid, violated the disciplinary rules regardless of whether "any of these failures by itself would amount to a violation," id; and in a fourth when he would not assist his client in an "attempt to plead guilty," 470 A2d at 274, "and the case went to trial," ibid.

The DC court could cite "no precise precedents," 470 A2d at 291, for the misconduct established by its findings and no legal authority for its construction of DR6-101(A)(3) and DR7-101(A)(1), and petitioner had no notice, warning or reason to believe "that the courts would condemn the conduct," Ruffalo, supra at 554, 88 SCt at 1226, found to violate DR6-

101(A)(3) and DR7-101(A)(1) as construed by the DC court because that conduct had the approval of precedent authorities.

A decision not to file a motion may be based on the obligation "not to clog the courts with frivolous motions or appeals," Polk County v Dodson, supra at 323, 102 SCt at 452 (1982), citing ABA Standards for Criminal Justice, Commentary to 4-3.9.

By telling a judge of his disapproval of a mentally competent client's decision to plead guilty the attorney may accentuate the voluntariness of the plea, the long-standing test of its validity, Hill v Lockhart, 106 SCt 366, 369 (1985), rather than "thwart the client's achieving her lawful objective of pleading guilty," 470 A2d at 288, as the DC court dreads.

Advising the client not to take the stand but to "try to knock down the government's case" is sound strategy when the client's credibility is doubtful.

No attorney can anticipate when a "sum total" of imputed "failures" may amount to a violation of the disciplinary rules.

Assisting a client in an "attempt to plead guilty" or "in entering his plea," 470 A2d at 277, compromises both "the voluntariness of the plea," id at 276, and the attorney's constitutional role in providing the client with "assistance of counsel for his defense." Counsel should inform and advise the client but should not assist the client in the actual waiver of the right to defend.

The DC court found in the first case that the client "might theoretically have been released," 470 A2d at 286, had petitioner filed her requested motion. In the second case it found that petitioner, who planned to "knock down the government's case," determined "that no investigation was necessary," id at 291, although he "had a half-hour

telephone conversation with the Assistant United States Attorney in charge of the case," id at 290, and he "intended to interview the complaining witness," ibid. In the third it found that petitioner "failed to communicate in any significant fashion with his client," 470 A2d at 275, although the client "asked him to speak to the US Attorney's Office about a plea bargain," id at 273, and petitioner "did so at that time," id at 274. In the fourth case the DC court by sheer speculation found that the client's confusion or uncertainty about pleading guilty "could have been cleared up in a moment or two," id at 276.

As petitioner demonstrated to the district court under Rule 4-3(II)(d)(2), such findings are unsupported, speculative, or, where supported factually, unacceptable as proof of disciplinary violations of which he could

have had fair notice or warning. Such findings are proof unacceptable to a federal court and cannot constrain it to impose discipline under the principles of right and justice.

3. The district and circuit courts should not be allowed to adopt the DC disciplinary action.

It is wrong and unjust for the DC Circuit to affirm its district court's adoption of procedure in which "the several layers of procedural due process protections are inappropriate," and only "fundamental aspects of procedural fairness" (a meaningless phrase) are observed. It is wrong and unjust to accept proof of violations of disciplinary rules construed to obligate attorneys to seek or pursue client objectives "as they see them." No other circuit, to petitioner's knowledge, has countenanced such a procedure or such a construction.

No other federal courts, to petitioner's knowledge, require attorneys on pain of discipline to file motions at clients' requests, to refrain from informing hearing judges of advice not to plead guilty, to pursue particular tactics and strategies, or to assist clients in articulating guilty pleas. Every other circuit appears to adhere to the precedents of Ruffalo, supra, and Selling v Radford, 243 US 46, 37 SCt 377 (1917), and to impose discipline only on fair notice with ample opportunity to be heard. The DC Circuit should be obliged to do the same.

CONCLUSIONS

Review should be granted, the judgment of the DC Circuiot should be reversed, and the reciprocal discipline order of the district court should be vacated. Any

further proceedings should include specific findings on petitioner's demonstrations of procedural due process deprivation and unacceptable proof of violations of disciplinary rules vaguely and overbroadly construed.

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-5148 September Term, 1986

In the Matter of: AGD 84-3

John J Stanton, respondent,
a member of the Bar of the
United States District Court
for the District of Columbia,
Appellant

BEFORE: Bork, Silberman, and D H Ginsburg, Circuit Judges

O R D E R

Upon consideration of appellant's motion for summary reversal and the opposition and reply thereto and for the reasons set forth in the accompanying memorandum, it is

ORDERED by the court that the motion be denied. It is

FURTHER ORDERED by the court, on its own motion, that the district court orders of November 15, 1985 and January 21, 1986

be summarily affirmed.

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See DC Cir Rule 14.

Per Curiam

No 86-5148 - In re Stanton

MEMORANDUM

John J Stanton, appellant, a member of the bar of the District of Columbia, was the subject of two disciplinary proceedings before the District of Columbia Court of Appeals (DCCA). In one proceeding, the DCCA found two separate acts of "neglect of a legal matter ...," DR6-101(A)(3), and two separate instances of "intentional failure to seek a client's lawful objectives," DR7-101(A)(1). See In re Stanton, 470 A2d 272, 272 (DC 1983). The court ordered that Stanton be suspended for a year and a day from the practice of law. Id. In the other proceeding, the DCCA found one instance of "neglect of a legal matter entrusted to him," DR6-101(A)(3)," and two acts of "intentional failure to seek a client's lawful objectives," DR7-101(A)(1). See In re Stanton, 470 A2d 281, 282 (DC 1983),

cert denied, 466 US 972 (1984). The court ordered that Stanton be suspended for 60 days from the practice of law. Id. The two suspensions were to be served concurrently. Id. In both cases, the court accepted the findings and recommendations of its Board on Professional Responsibility.

Stanton was also a member of the bar of the US District Court for the District of Columbia. The orders issued by the DCCA triggered reciprocal disciplinary proceedings by the district court pursuant to its then-Local Rule 4-3(II). Stanton, in response to the district court's order to show cause, claimed that reciprocal discipline should not be imposed. See Record Excerpt (RE) No 2. He argued "that the procedure in Ihis DCCA disciplinary proceedingI deprived him of due process, that the asserted proof of misconduct does not support the conclusion of the

disciplining court, and that grave injustice would result from acceptance of that conclusion as final by imposition of reciprocal discipline in this case." Id at 1. The committee on grievances of the district court reviewed the DCCA opinions and Stanton's response to the order to show cause and stated that "[t]he committee is of the view that reciprocal discipline should be imposed under Rule 4-3(II)(d) of the Rules of this Court." See RE No 3 at 1. The committee rejected Stanton's arguments:

> But respondent's memorandum fails to demonstrate that his proffered conclusions "clearly appear" "upon the face" of this disciplinary proceeding record as required by Rule 4-3(II)(d) of this court's Rules. The committee finds the opinions of the District of Columbia Court of Appeals to be particularly persuasive and effective in disposing of respondent's claims. In short, the record in this case simply will not support any demonstration, or any finding by this court, of such clearly apparent deficiencies in the disciplining of respondent.

> To the contrary, the record clearly supports the action taken against respondent.

Id.

In response, Stanton filed a "Motion to Strike or Recommit Response/Recommendation of Committee on Grievances." See RE No 4. Stanton argued that the committee's response "provides no more than four sentences of bare, unreasoned and unsupported conclusions and hortatory statements for its recommendation of unprecedented reciprocal discipline and is inadequate and unsuitable for use in rendering an adequately informed, independent judgment." Id. The committee responded, disputing Stanton's allegations that their recommendation was unreasoned and unsupported:

> The committee remains of the view that reciprocal discipline should be imposed under Rule 4-3(II)(d) of the Rules of this court. In short, this committee reaffirms the response filed by this

committee on April 17th, 1985.

RE No 5 at 2.

On November 15, 1985, the district court denied Stanton's motion to strike or recommit and suspended Stanton from the practice of law in the district court for a period of a year and a day, effective nunc pro tunc as of June 22, 1984. The court further ordered that the suspension shall remain in effect until further order of the DCCA terminating his suspension. See RE No 6. It stated:

> The court has carefully considered the respondent's motion to strike or recommit response/recomendation of committee on grievances, the response of the committee on grievances thereto and the respondent's reply and the entire record herein and has determined that the respondent's motion to strike or recommit response/recommendation of committee on grievances should be denied.
>
> Further, the court finds that none of the defenses raised by the respondent herein has merit sufficient to bar the imposition of reciprocal discipline and

> that none of the defenses provided by Rule 4-3(II)(d) of this court appears on the face of the record herein.

Id at 2.

On December 2, 1985, Stanton filed a motion to argue reconsideration of suspension order at oral hearing. See RE No 7. On January 21, 1986, the court denied the motion. See RE No 9. On February 19, 1986, Stanton filed a timely notice of appeal of the order of suspension and the denial of the motion for reconsideration.[1] He has now filed a motion for summary reversal of the

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[1]Initially, there was some question as to whether the notice of appeal was timely. The notice would have been timely to appeal the order of suspension only if the motion for reconsideration was a Rule 59 motion rather than a Rule 60 motion. It was not clear whether the motion was timely served under Rule 59 because there was no attached certificate of service. This court, per Acting Chief Judge Wald, remanded the record to the district court to clarify this matter. The district court, on remand, certified the notice of appeal as having been timely filed.

district court order.

Summary disposition is appropriate when the merits of the case are "so clear, plenary briefing, oral argument, and the traditional collegiality of the decisional process would not affect our decision," Sills v Bureau of Prisons, 761 F2d 793-94 (DC Cir 1985). Stanton has not met his "heavy burden," id. at 793, that summary reversal is warranted. In fact, upon careful review of the record, we determine that summary affirmance is appropriate.

In Selling v Radford, 243 US 46 (1917), the Supreme Court examined the effect of disbarment from state court on membership in the bar of a federal court. The court held that a state disbarment order does not automatically bind a federal court. Id. at 50-51. Instead, it gives rise to a rebuttable presumption that an attporney lacks the "private and professional

character" to remain a member of the federal bar. Id. The court listed three conditions that would rebut the presumption:

> IWIe should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1. that the state procedure from want of notice or opportunity to be heard was wanting in due process; 2. that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or 3. that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained to do so.

Id. at 51. The Supreme Court has reaffirmed this standard, see In re

Ruffalo, 390 US 544, 551 (1968); Theard v United States, 354 US 278, 282 (1957), and the district court codified this standard in its Local Rule 4-3(II)(d).

Stanton argues "that the district court denied him due process by failing to follow its own Rule 4-3(II)(d) in suspending him from the practice of law solely on the basis of the DC disciplinary action with no decision (findings and conclusions) on IhisI demonstrations under that rule in response to the order to show cause why the DC action should not be deemed lawful and conclusive." Motion for summary reversal at 4. Stanton claims that, in his response to the order to show cause, he raised legitimate arguments why district court should not impose identical discipline. Id. at 2. He argues that the district court could not impose identical discipline without specifically rejecting his arguments. Id. at 5.

In support of his argument, Stanton cites In re Thies, 662 F2d 771 (DC Cir 1980). In that case, this court vacated an order of the United States Tax Court disbarring Thies. The Tax Court had relied exclusively on Thies' automatic disbarment from the New York state courts following a felony conviction for assaulting a federal officer. Id. at 771-72. "The court's order citeIdI only the state disbarment and containIedI no findings other than a bare statement that the Selling v Radford criteria were satisfied." Id. at 773. This court held "that, in these circumstances, the Tax Court erred in its exclusive reliance on the state disbarment." Id. The court reasoned:

> The state court did not offer appellant the procedural guarantees specified by Selling v Radford. No hearing was held. Instead, the disbarment followed automatically upon Thies' felony conviction. Nor was the state's "conclusion on IThies'I character" supported by record-

> ed findings; the state made no factual findings whatsoever. Accordingly, we need not consider the third factor listed in Selling: whether under all the circumstances Thies' disbarment from federal court would violate principles of "right and justice."

Id. at 773-74.

We disagree with Stanton's arguments. The district court specifically stated that it considered the record and all submissions by the parties and found "that none of the defenses raised by the respondent herein has merit sufficient to bar the imposition of reciprocal discipline and that none of the defenses provided by Rule 4-3(II)(d) of this court appears on the face of the record herein." The committee on grievances specifically found "the opinions of the District of Columbia Court of Appeals to be particularly persuasive and effective in disposing of respondent's claims." RE No 3 at 1. The DCCA order and the report of its

Board on Professional Responsibility were thorough, and the court concluded, on the basis of those opinions, that imposition of reciprocal discipline was appropriate. In addition, the DCCA and its board rejected the procedural due process arguments that Stanton raised in the district court. See In re Stanton, 470 A2d 281, 282 n 2, 284-286 (DC 1983), cert denied, 466 US 972 (1984). The district court and its grievance committee were persuaded by the DCCA's rejection of these arguments. Finally, this case is distinguishable from In re Thies, 662 F2d 771 (DC Cir 1980); in this case, the DCCA and its board held hearings and made factual findings.

Because Stanton's argument that the district court failed to make an independent determination that reciprocal discipline should be imposed is without merit, we summarily affirm the district court orders.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-5148 September Term, 1986

In the Matter of:

John J Stanton, respondent,
a member of the bar of the
United States District Court
for the District of Columbia

BEFORE: **BORK**, **SILBERMAN**, and **D H GINSBURG**, Circuit Judges

O R D E R

Upon consideration of appellant's petition for rehearing, it is **ORDERED**, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT:
GEORGE A FISHER, CLERK

BY:

Robert A Bonner
Deputy Clerk